

## Existing regulatory gaps that were highlighted by the occurrence of the West Virginia spill, and implications for OW's programs

### Background:

- On Jan. 9, 2014, a steel storage tank at the Freedom Industries facility near Charleston, West Virginia containing crude 4-methylcyclohexane methanol (MCHM) began leaking through a hole.
- The tank did have a brick-and-concrete secondary containment dike for spills, but that dike had structural problems.
- The chemical was soon seeping into the Elk River, just 1.5 miles upstream of a water-treatment center.

### NPDES program:

- Chemical storage facilities such as this likely do not have an NPDES permit for process wastewater
- These facilities likely have NPDES permits for the discharge of industrial stormwater.
  - Most such industrial SW general permits are issued by the states, in this case, West Virginia
  - This facility was covered under the WV Multi-Sector General Permit (MSGP) under Sector I (motor freight transportation facilities, passenger transportation facility, petroleum bulk oil stations and terminals, rail transportation facilities, and USPS transportation facilities)
- The spill that occurred was not a stormwater discharge; however, the MSGP does include provisions to prevent spills of materials from being discharged in stormwater. For example:

**Maintenance** (Part 2.1.2.3). You must regularly inspect, test, maintain, and repair all industrial equipment and systems to avoid situations that may result in leaks, spills, and other releases of pollutants in stormwater discharged to receiving waters. You must maintain all control measures that are used to achieve the effluent limits required by this permit in effective operating condition. Nonstructural control measures must also be diligently maintained (e.g., spill response supplies available, personnel appropriately trained). If you find that your control measures need to be replaced or repaired, you must make the necessary repairs or modifications as expeditiously as practicable.

**Spill Prevention and Response Procedures** (Part 2.1.2.4). You must minimize the potential for leaks, spills and other releases that may be exposed to stormwater and develop plans for effective response to such spills if or when they occur. At a minimum, you must implement:

  - Procedures for plainly labeling containers (e.g., "Used Oil," "Spent Solvents," "Fertilizers and Pesticides," etc.) that could be susceptible to spillage or leakage to encourage proper handling and facilitate rapid response if spills or leaks occur;
  - Preventative measures such as barriers between material storage and traffic areas, secondary containment provisions, and procedures for material storage and handling;
  - Procedures for expeditiously stopping, containing, and cleaning up leaks, spills, and other releases. Employees who may cause, detect, or respond to a spill or leak must be trained in these procedures and have necessary spill response equipment available. If possible, one of

these individuals should be a member of your stormwater pollution prevention team (see Part 5.1.1); and

- Procedures for notification of appropriate facility personnel, emergency response agencies, and regulatory agencies. Where a leak, spill, or other release containing a hazardous substance or oil in an amount equal to or in excess of a reportable quantity established under either 40 CFR Part 110, 40 CFR Part 117, or 40 CFR Part 302, occurs during a 24-hour period, you must notify the National Response Center (NRC) at (800) 424-8802 or, in the Washington, DC, metropolitan area, call (202) 267-2675 in accordance with the requirements of 40 CFR Part 110, 40 CFR Part 117, and 40 CFR Part 302 as soon as you have knowledge of the discharge. State or local requirements may necessitate reporting spills or discharges to local emergency response, public health, or drinking water supply agencies. Contact information must be in locations that are readily accessible and available.

**Routine Inspections.** The MSGP requires routine site inspections and visual inspections. Control measures must be observed to ensure they are functioning correctly and for control measures needing replacement, maintenance or repair.

**Reporting** (Part 7.4). Where applicable, you must submit the following reports to the appropriate EPA Regional Office, as applicable.

- 24-hour reporting (see Appendix B, Subsection 12.F) - You must report any noncompliance which may endanger health or the environment. Any information must be provided orally within 24 hours from the time you become aware of the circumstances
- 5-day follow-up reporting to the 24 hour reporting (see Appendix B, Subsection 12.F) - A written submission must also be provided within five days of the time you become aware of the circumstances